

*Lieberman*  
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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-194924

DATE: December 19, 1979

MATTER OF: Data 100 Corporation C50

DIGEST:

[Protest Alleging]

[Failure of agency to advise offerors of complete evaluation criteria] in RFP or to amend specifications to communicate changed requirements does not provide all offerors opportunity to compete on equal basis.

2 Data 100 Corporation (Data 100) protests the award  
by the Consumer Product Safety Commission (CPSC) of 73  
Purchase Order No. CPSC 79047200, to IBM Corporation 0961  
(IBM), for a high and low speed mini computer system  
with accompanying software. Data 100 contends that it  
submitted the lowest cost best and final offer (BFO)  
which was penalized by the attribution of a \$300,000  
evaluation factor for the cost of converting existing  
computer programs to the computer language required  
for its equipment. As the result of this cost attri-  
bution, Data 100's proposal price of \$253,074 (which  
appeared initially to be \$66,345 lower than IBM's pro-  
posal price of \$319,419) was evaluated to be substan-  
tially higher than IBM's. Award to IBM was made on the  
basis of these cost considerations.

CPSC had received authorization for the procure-  
ment of the equipment in question from the General  
Services Administration (GSA) in 1975. There followed  
a protracted agency effort to procure the equipment,  
as the result of which an initial contract was awarded  
in September 1977 to another firm as the lowest price  
acceptable offeror. Both IBM and Data 100 had sub-  
mitted proposals in response to the RFP which had  
resulted in the 1977 award. That awardee's equipment  
was eventually found not usable because it failed to  
consistently pass acceptance testing. As a result,  
that contract was canceled in November 1978.

*procedures or  
practices of  
evaluation  
evaluation criteria  
solicitation modifications*

*008 #2  
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*contract award protests  
computerized information  
systems  
Testing  
Contract  
cancellation*

CPSC issued an RFP to repurchase the requirement in November 1978. The proposals received from Data 100 and IBM on December 18, 1978, were considered technically acceptable. The mini computers were being purchased for the purpose of handling certain data processing tasks then being performed at the Parklawn Computer Center (Parklawn), a large, central computer installation. The transfer would therefore require the conversion of existing programming from the language in use at Parklawn to the language compatible with the mini computers. The Parklawn programs were written in four different computer languages, but 85% of them were in a language known as PL1. The RFP had specified that an "ANSI COBOL compiler" was required for the mini computer replacement. Data 100 asserts that it had no way of knowing that PL1 was involved in the existing Parklawn programs; that it had conducted a demonstration for CPSC involving only COBOL as specified in the RFP; that it was never advised that an evaluation factor for the cost of converting PL1 programming would be applied to its proposal; or even that PL1 was acceptable for use on the mini computers.

IBM, on the other hand, had submitted an initial proposal which included a PL1 compiler and PL1 software. Hence its mini computers were compatible with the Parklawn programs. Data 100 contends that IBM was probably aware of the use of PL1 at Parklawn because IBM had supplied the main frame and software for the Parklawn installation.

In response to Data 100's original proposal, CPSC issued a letter on February 8, 1979, requesting a BFO and indicating that:

"Award will be made to the lowest responsive, responsible offeror, price and other factors considered. Among the other factors to be considered will be:

a. Cost savings in the transfer of work from Parklawn Computer Center to CPSC equipment.

\* \* \*

CPSC contends that these "factors," in particular, factor "a." quoted above, should have indicated to Data 100 that CPSC was interested in a system which would permit either direct use of PL1 programming on the mini computers, or that it would consider the cost of conversion from PL1 to COBOL.

Data 100 elected to have its original proposal considered as its BFO, because of its asserted belief that the system it proposed in accordance with the RFP requirements--using COBOL--provided precisely the kinds of cost savings referenced in the February 8, 1979, letter. Award was made to IBM on April 30, 1979. Data 100 asserts that it became aware that award was made largely on the basis of the aforementioned conversion cost factors concerning PL1 at a debriefing held on May 14, 1979, and believes the addition of the \$300,000 evaluation factor to its proposal price was improper under the terms of the RFP. We agree.

It is a fundamental principle of Federal procurement law that the solicitation be drafted in such a manner that it informs all offerors what will be required of them under the contract in order to enable all offerors to compete on an equal basis. Comptek Inc.; Ontel Corporation, 54 Comp. Gen. 1080, 1083, (1975), 75-1 CPD 384. See Federal Procurement Regulations 1-3.802(c) (1964 ed., amend 118, September 1973).

CPSC has suggested that conversion from PL1 only became a factor after the submission of the initial offers, at which time CPSC asserts that it first learned that IBM had developed the PL1 mini computer compiler which it offered. If this is correct, then CPSC had an obligation to advise Data 100 that its specifications had changed. American Air Filter Company, Inc., 57 Comp. Gen. 285 (1978), 78-1 CPD 136.

We are of the opinion that in order to be able to compete on an equal footing for this contract, Data 100 needed to know certain fundamental factors--that PL1 was an acceptable language for use on the mini computers; that CPSC programs in use at Parklawn were primarily written in PL1; that in order to use the solicited mini computers in the manner contemplated by CPSC it was necessary either to purchase compatible equipment and software, or to convert the existing programs to COBOL; and that an evaluation factor would be applied for the cost of conversion to proposals which did not offer PL1 compatible equipment. Nowhere in the RFP is any of this information provided. Although it is CPSC's belief that its request for BFO's specifying "cost savings in the transfer of work from the Parklawn Computer Center to CPSC equipment," as a factor which would be considered in award, provides notice of this requirement, we fail to see how this language so provides. In our opinion, the reference to transfer of work does not by itself imply that there is a requirement for conversion from one computer language to another. Data 100, not surprisingly, did not interpret the request for BFO to mean that such a conversion was needed or that the cost of conversion would be an evaluation factor.

The subject RFP is remarkably bereft of specificity. For example, it does not indicate what criteria are to be considered in evaluation of the proposals, other than "price and other factors." The only "other factors" which were ever specified are the factors mentioned in the request for BFO. It is a fundamental principle of competitive procurement that offerors must be treated equally and be provided a common basis for the submissions of proposals. Host International, Inc., B-187529, May 17, 1977, 77-1 CPD 346. Thus we have stated:

"The touchstone of Federal procurement is that goods and services will be obtained in such a way as to promote full and free competition for the award of contracts consistent with the nature and extent of the goods or services being procured.

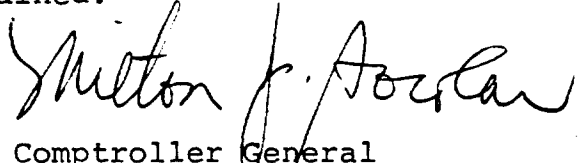
Where competition is feasible, competing offerors should be treated in a fair and impartial manner. In this regard, we have often stated that intelligent competition requires as a matter of sound procurement policy, that offerors be advised of the evaluation factors to be used and the relative importance of those factors. We regard this as basic to any fairly conducted procurement and view as inimical to Federal procurement principles of fair play and impartiality any procedures and practices which do not comport with this 'requirement'." (Citations omitted.)  
Fiber Materials, Inc., 57 Comp. Gen. 527 (1978), 78-1 CPD 422.

We do not believe that the conduct of this procurement met the above stated standard.

Accordingly, we believe that the award to IBM under the criteria of the RFP was improper. See Cohu, Inc., 57 Comp. Gen. 759 (1978), 78-2 CPD 175. However, since the equipment in question has already been delivered and accepted, we do not believe there is any practical way we can afford any meaningful relief in the case. Cohu, Inc., supra. We also note that, at a conference held on this protest under our bid protest procedures, there was at least a tacit admission by the protester that it did not have PL1 compatible equipment or necessary program conversion software available. It is thus unlikely that Data 100 could have been the successful offeror even if the agency's programming needs were plainly specified.

We are bringing this matter to the attention of the Chairman, Consumer Product Safety Commission.

The protest is sustained.

  
For The Comptroller General  
of the United States